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Supreme Court of the United States.

October Term, 1919.

No. 91

EL BANCO POPULAR DE ECONOMIAS Y PRESTAMOS DE SAN JUAN, P.R.,
PLAINTIFF, APPELLANT,

v.

ELIAS B. WILCOX,
DEFENDANT, APPELLEE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

Brief of Plaintiff, Appellant, in Support of Jurisdiction.

ANDREW C. SPENCER & SON, LAW PRINTERS, BOSTON.

Supreme Court of the United States.

OCTOBER TERM, 1919.

No. 990.

EL BANCO POPULAR DE ECONOMIAS Y PRESTAMOS DE SAN JUAN, P.R.,
PLAINTIFF, APPELLANT,
v.
ELIAS B. WILCOX,
DEFENDANT, APPELLEE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF OF PLAINTIFF, APPELLANT, IN SUPPORT OF JURISDICTION.

The appellant filed a brief in opposition to the original motion to dismiss, which was withdrawn by the appellee, and it asks the Court to consider that brief in passing on the present motion.

The appellee seeks to avoid the force of the statutes referred to in the appellant's original brief in support of jurisdiction by invoking the decision of this Court in *Inter-Island Co.* v. *Ward*, 242 U.S. 1. In that case it was decided that a writ of error will not lie from the Supreme Court to review a judgment of the Cir-

cuit Court of Appeals in a case, presenting neither diversity of citizenship nor a federal question, which was taken to that Court from the Supreme Court of Hawaii pursuant to Judicial Code, sec. 246, as amended by the Act of January 28, 1915, c. 22, 38 Stat. 803, upon the basis only of pecuniary amount.

Under sections 128, 238 and 246 of the Judicial Code, as amended by the Act of June 28, 1915, c. 22, appeals from the Supreme Court of Hawaii and Porto Rico to the Supreme Court of the United States and to the Circuit Court of Appeals and from the District Courts of the territories to the Circuit Court of Appeals are governed by the same provisions, and the decrees of the Appellate Courts have like effect. Prior to the Act of 1915 appeals from the Supreme Courts of the territories to the Supreme Court of the United States could be taken in any case wherein the amount in controversy exceeded $5000, and, regardless of amount, in cases arising under the Constitution and laws of the United States.

Section 246 of the Judicial Code as amended transferred the appellate jurisdiction in territorial Supreme Court cases not arising under the Federal Constitution and laws from the Supreme Court of the United States to the appropriate Circuit Court of Appeals. It was of course obvious that a statute framed for the purpose of relieving the Supreme Court of the United States from the burden of reviewing this class of cases would not be interpreted as affording that relief by one provision and taking away the relief by another unless both the spirit and letter of the statute required it.

The contention of the defendant, appellee, that the

rule laid down as applicable to appeals from the Supreme Courts of the territories should be applied to appeals from the District Courts of the territories is in effect an attempt to have the distinction heretofore observed between the two classes of cases disregarded and the plain and well-established meaning of the language of the statutes rejected upon the assumption that the judiciary, if clothed with legislative powers, would not take jurisdiction to review on appeal final decrees of the Circuit Court of Appeals in cases where the jurisdiction rests upon the fact that one of the parties is a citizen of the United States. This contention is unsupported either by existing or antecedent legislation.

On the one hand, section 6 of the Court of Appeals Act of March 3, 1891, the ancestor of sections 128 and 241 of the Judicial Code, is specifically limited in its terms to appeals from the District and Circuit Courts, and there is nothing in the re-enactment of the provisions of section 6 as a part of the Code to indicate an intention to include within the scope of section 241 appeals from and writs of error to the Supreme Courts of Porto Rico and Hawaii; obviously the above re-enactments did not deal with appeals from territorial Supreme Courts, and, as pointed out in the case of *Inter-Island Co.* v. *Ward, supra,* such appeals and writs of error were not from the beginning or in the end controlled by the law generally applicable to Courts of the United States, but were governed by special provisions.

On the other hand, the appellate jurisdiction of Circuit Courts of Appeals of cases from the District Courts of Hawaii and Porto Rico, by section 128 of

the Judicial Code, as amended by the Act of January 28, 1915, is specifically declared to be final in cases which do not include the one at bar. The case at bar, unlike the *Inter-Island Co.* case, is a District Court case, and as such has never been governed by the special provisions applicable only to cases in the territorial Supreme Courts, but is expressly made subject to the general provisions governing appeals from District Courts.

Moreover, there is no provision whereby this case could be reviewed by the Supreme Court on certiorari. Section 240 of the Judicial Code provides:

> "In any case, civil or criminal, in which the judgment or decree of the circuit court of appeals is made final by the provisions of this Title, it shall be competent for the Supreme Court to require, by certiorari or otherwise, upon the petition of any party thereto, any such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court."

But neither section 128, enumerating the cases in which judgment and decrees of the Circuit Court of Appeals shall be final, nor any other section of the Judicial Code contains any provision making final, judgments and decrees of the Circuit Courts of Appeals where the jurisdiction of the District Court is dependent upon the fact that the parties or either of them are citizens of the United States.

Therefore, if jurisdiction is denied, cases appealed from the District Courts of Hawaii and Porto Rico

to the Circuit Courts of Appeals, in which the jurisdiction of the District Courts depended upon the fact that the parties or either of them were citizens of the United States or of a foreign state, cannot be reviewed by the Supreme Court either by appeal or writ of error or by certiorari.

It is improbable that Congress could have intended to afford neither appeal or writ of error nor certiorari in such cases.

It is suggestive that the case of *Inter-Island Co.* v. *Ward* was reviewable by the Supreme Court of the United States directly from the territorial Supreme Court on certiorari under the provisions of section 246 of the Judicial Code as amended.

Respectfully submitted,

BOYD B. JONES,

Solicitor for Appellant.